

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIA HENRY, et al.,

Plaintiffs,

vs.

BROWN UNIVERSITY, et al.,

Defendants.

Docket No. 22 C 125

Chicago, Illinois
August 24, 2023
1:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPEARANCES:

For the Plaintiffs: GILBERT LITIGATORS & COUNSELORS
BY: MR. ROBERT DEWITT GILBERT
MR. ERIC CRAMER
11 Broadway, Suite 615
New York, NY 10004
(646) 448-5269

BERGER MONTAGUE PC
BY: MR. ERIC L. CRAMER
1818 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 875-3009

Court Reporter: MS. CAROLYN R. COX, CSR, RPR, CRR, FCRR
Official Court Reporter
219 S. Dearborn Street, Suite 2102
Chicago, IL 60604
(312) 435-5639

1 THE COURT: Am I going to have the same issue with
2 everybody?

3 MR. GILBERT: Well, the principle with Vanderbilt, if
4 it's vindicated, would have applicability to other defendants.

5 THE COURT: Fine. Then you're going to brief that
6 too. I don't want to decide something based on three pages in
7 a status report if it's going to end up affecting other folks.
8 That's the deal. I'll set the next date and then all the
9 other deadlines will kick in. That's what we're going to do.

10 Now we're going to talk about Georgetown. Okay. So
11 the main -- I don't think we need to rehash everything that
12 was discussed at the last date, but I guess I'm having -- I'm
13 having a hard time getting my arms around exactly where things
14 stand right now as it relates to, you know, what's going to
15 happen in terms of identifying people in these president's
16 lists. So what I really need is I need this crystallized in a
17 nice, neat little nutshell by each side as to how you see what
18 exactly the issue is. I was -- honestly, I was having to read
19 too much. I had -- everything referred back to something
20 else. So I was having to go back to the transcript and go
21 back to the motions, and at some point in there, I said I'm
22 not doing this anymore, so go ahead.

23 MS. MILLER: Your Honor, Britt Miller on behalf of
24 Georgetown. At the last hearing, your Honor directed us to
25 meet and confer with the plaintiffs. Starting with the

1 proposal that Georgetown had made on page 4 of its response
2 and to the motion for sanctions, we had that meet and confer.
3 Plaintiffs chose not to engage on the bullet points that we
4 offered and asked for, we believe, more than we had proposed.

5 THE COURT: What do you exactly understand the
6 plaintiffs to be asking for right now as it relates to this?

7 MS. MILLER: We understand they are continuing to ask
8 for the entire president's office to be designated for as a
9 custodian, a single custodian, and all of the members of the
10 president's office be collected, processed, and searched for
11 documents. They are also --

12 THE COURT: What would that exactly mean in terms of
13 numbers of people and burden and whatnot? What would it mean?

14 MS. MILLER: I don't have an exact number of the
15 number of people, but I believe it's well over ten people that
16 would have to have their documents collected.

17 THE COURT: Aside from that, how many custodians are
18 designated from Georgetown as of right now that you had to do
19 the searches on?

20 MS. MILLER: I'd have to ask my colleague for the
21 exact number.

22 THE COURT: Is your colleague here?

23 MR. FENSKE: It's 10 or 11, your Honor.

24 THE COURT: It's 10 or 11. So it's basically
25 doubling the number of custodians.

1 MS. MILLER: Just as to the president's list. As to
2 the advancement office, they've asked for the head of the
3 advancement office to be designated on behalf of all of the
4 members of the advancement office and search for documents
5 responsive. I started out with all RFPs and then narrowed it
6 down to I believe 10 RFPs, but, again, all of those people --
7 and I can get you a number if you need to know a number -- but
8 I would imagine it's well over ten people in the advancement
9 office and all of their emails.

10 THE COURT: So a bunch more custodians. What else do
11 you understand them to be asking for? Or is that basically
12 it?

13 MS. MILLER: Certainly. They're asking for what
14 we've already done. We have gone forward with the information
15 and the bullet points that we committed to producing in the
16 motion for sanctions and are almost complete with that
17 production, but they've also asked for non -- for all of the
18 -- all of the lists to be unredacted, so no FERPA redactions
19 whatsoever on any of the lists. And they've asked --

20 THE COURT: The lists meaning the president's list?

21 MS. MILLER: Yes. And any related information
22 related to those lists to be unredacted and there should be no
23 redactions whatsoever.

24 THE COURT: So the big problem from your perspective
25 with the first part of it, the custodian thing, is burden.

1 MS. MILLER: Yes.

2 THE COURT: And then the problem with the second part
3 of it, the FERPA thing is, also burden but a different kind of
4 burden, or something else other than that?

5 MS. MILLER: It's primarily a FERPA. The redaction
6 issue is primarily a FERPA, and we've already done a number of
7 redactions.

8 THE COURT: The unredacted and you'd have to notify
9 potentially all those people?

10 MS. MILLER: Correct.

11 THE COURT: Which is how many people are we talking
12 about? Do you have any kind of a feel for it?

13 MS. MILLER: Tens of thousands of students I would
14 imagine over the course of the entire period.

15 THE COURT: Thanks.

16 Mr. Gilbert.

17 MR. GILBERT: Your Honor, that is not accurate as to
18 what the relief we're seeking. We actually submitted proposed
19 forms of order. But the priority of what we're seeking is --
20 and Georgetown, of course, is in a league of its own in having
21 had two forms of misconduct, discovery misconduct --

22 THE COURT: So remember what my question was. Look,
23 when I said what I said before about diagramming sentences, I
24 actually meant it. You started a sentence, you ended up in
25 another concept, and now you're off to the third one. You got

1 to stay on number one. I asked one question. What are you
2 asking for?

3 I don't need -- I don't need -- I don't need the
4 manager calling the bullpen, the guy walking in from the
5 bullpen warming up, winding up, and then doing the pitch. I
6 just want the pitch. That's all I want.

7 MR. GILBERT: Georgetown shall produce all
8 president's lists and documents concerning those lists no
9 later than August 15th. That was the first thing in the
10 order.

11 THE COURT: What about this thing that Ms. Miller
12 said about custodians?

13 MR. GILBERT: Well, that's a different -- our
14 priority -- I think we should be able to speak to what our
15 priority is.

16 THE COURT: The priority is the list?

17 MR. GILBERT: No, it's the documents concerning the
18 list.

19 THE COURT: What does that mean? What does
20 "documents concerning the list" mean?

21 MR. GILBERT: The list as they've known for months.
22 Again, the deadline for production --

23 THE COURT: What does "documents concerning the list"
24 mean?

25 MR. GILBERT: How or why someone was on the list and

1 the communications from the president to his immediate staff
2 about the reason people are on the list.

3 THE COURT: I'm just going to throw something out
4 here. And I know you guys don't want to do your 30(b)(6)s
5 yet. I know that. I read all that stuff.

6 Why wouldn't the more efficient way to do that be
7 just say, here's the 30(b)(6) notice. We want somebody to
8 come in and explain all of the stuff that you're just talking
9 about now about these president's lists. We want somebody to
10 explain how do you get on the list, what does it mean to be on
11 the list, what happens with the list, how does this translate
12 into admissions, whatever the other topics are. Why don't you
13 do that?

14 MR. GILBERT: Because that with all due respect, your
15 Honor, is not what we're focused on. What we're focused in
16 each case -- what they should do, frankly, is by a week from
17 tomorrow pull the files of -- that have on each of these
18 people who was on the president's list that spells out why
19 they're on the list or how they got on the list, those
20 documents. That's what "concerning" means, and we've made it
21 clear to them for months, and they've known that. And these
22 should have been done by May 15th. They should just pull
23 those files, produce them by a week from tomorrow.

24 THE COURT: Okay. So wait a second. Okay. Thank
25 you.

1 Now please answer my question. And I know what
2 you're going to tell me. You're going to say, Can you repeat
3 the question, and I'm going to say, No, because you should
4 have listened to it and answered it the first time.

5 MR. GILBERT: The question, as I understood it --

6 THE COURT: Why don't you do a 30(b)(6)? Why isn't
7 that a more efficient way of finding out what these
8 president's lists mean and how they're used?

9 MR. GILBERT: Because it isn't a question of what the
10 lists mean. It's the content of what is said about --

11 THE COURT: That what I mean by mean. What's the
12 import of these president's lists and how do they get used?
13 That's what you're trying to find out, right?

14 MR. GILBERT: I guess I'm not communicating that
15 clearly. That's not what we're trying to do, your Honor.
16 What we're trying to do is: Why was this person on the list?
17 That is, his dad gave \$5 million or his mother gave a quarter
18 million dollars.

19 THE COURT: Okay.

20 MR. GILBERT: We need to know --

21 THE COURT: And then what? Let's say you find that
22 out, that this person A is on the list because their mom gave
23 a million bucks. Then what? Then what?

24 MR. GILBERT: Then we compare it to the evaluation
25 ratings of the person and we have an opportunity to prove our

1 case.

2 THE COURT: Compare it with the evaluation ratings --

3 MR. GILBERT: Of each of these people who was on the
4 list --

5 THE COURT: -- to figure out what? I know the answer
6 to this question. I just want you to say it. To figure out
7 what?

8 MR. GILBERT: That the donation was a significant
9 factor.

10 THE COURT: How the list got used. It's five words.
11 Just say it. Why don't you just do a 30(b)(6) to ask somebody
12 how do these lists get used?

13 MR. GILBERT: Because that level of generality, your
14 Honor, is not what we're seeking. What we're seeking is --

15 THE COURT: You got to start somewhere, though,
16 right?

17 MR. GILBERT: Well, there was a court-ordered
18 deadline of May 15th was that flouted, your Honor. We have
19 depositions in September. And it isn't some general question
20 of how are the lists used. We know that in general they were
21 used to influence admissions. How is this person -- what was
22 the deal? Was it \$5 million? Was it a million dollars?

23 THE COURT: You need to be specific.

24 MR. GILBERT: That's why we need --

25 THE COURT: It's not enough to know it in

1 generalities. You need to know specifically how this affected
2 specific things?

3 MR. GILBERT: Correct, your Honor.

4 THE COURT: That's what you're telling me. See, you
5 actually could have said that ten minutes ago, and then we all
6 would have had that ten minutes of our life back.

7 MR. GILBERT: Well, there you go.

8 MS. MILLER: Your Honor, if you'd like, I can speak
9 to what we have produced, if that would be helpful.

10 THE COURT: This is what I want you to deal with.
11 Here's what I want you to deal with. These president's lists
12 have some level of significance. We can argue about how much
13 significance, how little significance; they have some level of
14 significance. So what Mr. Gilbert says the plaintiffs want to
15 be able to do is they want to be able to figure out how being
16 on that list translates into effect on the admissions process,
17 how being on a list that you're a donor, your family is a
18 donor, relative is a donor, whatever, translates into the
19 admissions process.

20 Okay. That's relevant, right?

21 MS. MILLER: In theory, your Honor, yes.

22 THE COURT: What's the theory?

23 MS. MILLER: We can have a debate as to how relevant
24 it is.

25 THE COURT: You read the difference between Rule 402

1 and Rule 403 and materiality. It's relevant. It's something
2 that makes a fact more likely than not. It's relevant, right?

3 MS. MILLER: Yes, your Honor.

4 THE COURT: Okay. So what -- does he already have
5 that?

6 MS. MILLER: Yes.

7 THE COURT: How does he have it?

8 MS. MILLER: He has the lists in question. They were
9 produced in the motion for sanctions. In response, we said we
10 would conduct a supplemental search for the lists from both
11 the president's office and from the admissions office. Those
12 were produced on July 31st, August 2nd, 7th, and August 21st.
13 That has been completed.

14 THE COURT: Okay. Does he have documentation -- when
15 I say he, I mean the plaintiffs -- do they have documentation
16 that would allow them to translate that president's list,
17 which has some names on it or whatever, and connect it with
18 admissions?

19 MS. MILLER: We have inserted UUIDs.

20 THE COURT: You inserted UUIDs that correspond? In
21 other words, if it was Jane Kennelly that was the student and
22 it was Matthew Kennelly who was the donor, they've got an ID
23 that makes it clear that they're related to each other?

24 MS. MILLER: They will have a UUID for the student if
25 they appear on the list, and then to the extent we have a UUID

1 in our data that identifies that student, they would be able
2 to match that person up. We are also producing --

3 THE COURT: You got to stop doing that. I told you
4 this on the TV the last time. Okay? All of the body language
5 that's going on off camera. It's a little less distracting
6 here than it is on the video because I can look away from you,
7 and on the video, you're staring me in the face, but you got
8 to cut it out. It's really aggravating, and I say this on
9 behalf of every judge in the world. Just wait.

10 Go ahead, Ms. Miller.

11 MS. MILLER: As part of the meet and confer,
12 plaintiff asked for certain documents from the advancement
13 office stating the reasons why a given student was on the
14 list. We have done a search for those, a go-get search and we
15 are in the process of going through the FERPA redaction and
16 the UID process. We think we have about 500 of those
17 documents.

18 THE COURT: Thanks. Stop.

19 Now, here's what I want you to do. And I know you're
20 getting angry. You just got to get past it. Okay? Here's
21 what I want you to do. I want you to respond to what she just
22 said, and I want you to tell me why it's not sufficient, what
23 she just said is being produced, why it's not sufficient to
24 get what you're looking for.

25 MR. GILBERT: We already know how the lists -- the

1 impact on admissions. We know that. The defendant Georgetown
2 has redacted it from the sealed -- from the public version of
3 the JASR -- a public version of the motion practice. They've
4 been very heavily redacted in what is available to the public.

5 THE COURT: Okay.

6 MR. GILBERT: But we know how it's used, and I'll
7 speak obliquely.

8 THE COURT: Okay.

9 MR. GILBERT: If you're on that list, it's a done
10 deal. There's an extremely high percentage to say the least
11 that you're in. It's a done deal. Virtually done deal.

12 THE COURT: Pause there for a second. Just pause
13 there for a second. Why isn't that good enough? For what
14 you're -- why isn't that good enough for what you're trying to
15 prove?

16 MR. GILBERT: Because again, your Honor, we don't
17 know why the person was on the list. It could be because it's
18 a faculty child, it could be an administrator's child.

19 THE COURT: Ah.

20 MR. GILBERT: Or it could be that they gave 5
21 million.

22 THE COURT: A disadvantaged person or something?

23 MR. GILBERT: Or whatever reason they were put on the
24 list, it's virtually a done deal.

25 THE COURT: So pause. I want to make sure I'm

1 extracting the right information from what you told me. What
2 you told me is that we know the list has an impact on
3 admissions. What we don't know is why the people are on the
4 list.

5 MR. GILBERT: Specific individuals are on the list,
6 correct.

7 THE COURT: Why this person is on the list. We don't
8 specifically know why this specific person was on the list.
9 We may know that being on the list got him or her in, but we
10 don't know why they're on the list in the first place, and you
11 need to know that -- and now I'm extrapolating here -- you
12 need to know that because that has a bearing on whether
13 financial considerations were taken into account.

14 MR. GILBERT: And how big the financial
15 consideration.

16 THE COURT: How much, yeah.

17 MR. GILBERT: Exactly.

18 THE COURT: Like a threshold or something like that.

19 MR. GILBERT: Exactly.

20 THE COURT: Pause.

21 What's wrong with what he just said?

22 MS. MILLER: Those are the documents I just
23 referenced, your Honor. On a go-get basis, we have gone to
24 the advancement office and we have collected approximately 500
25 documents that will provide information as to why different

1 inquiries were made as to people that were potentially being
2 considered for admissions. We're in the process of going
3 through the UID FERPA redaction process. So that takes a
4 while given how much information and personally identifiable
5 information are in these documents, but that is a process that
6 is underway.

7 THE COURT: Okay. So I'm just going to ask you a
8 question. You see me paging through stuff up here. What you
9 just now said, where do I find that in the supplement? You
10 both know the answer to this question.

11 MS. MILLER: If you give me a moment, your Honor.

12 THE COURT: The supplement being docket number 423.
13 I'm talking about the supplement.

14 MS. MILLER: I believe it's in the main status report
15 where we said that we were -- as part of the meet and confer,
16 we agreed to do a supplemental go-get for the advancement
17 office for those documents that would be -- indicate why a
18 particular person was being inquired about and that we would
19 go get those.

20 THE COURT: Just tell me where. I'm just asking.

21 MS. MILLER: It's on page 6, your Honor.

22 THE COURT: Of what document?

23 MS. MILLER: Of the July --

24 THE COURT: You're talking about something that was
25 filed before the last hearing, right?

1 MR. FENSKE: No, your Honor, July 31st.

2 THE COURT: Oh, the July 31st one. That's the one I
3 didn't physically print out.

4 Mr. Gilbert, you know what she's referring to, right?

5 MR. GILBERT: I'm looking at, your Honor, page 6.

6 THE COURT: Georgetown's position on the unresolved
7 issues.

8 MS. MILLER: It's the second paragraph down.

9 THE COURT: "Georgetown agreed to go beyond its
10 original proposal and search the centralized files" -- I'm
11 just going to say this, folks. I don't care if it's sealed or
12 not. I'm saying it. -- "centralized files of its advancement
13 office on a go-get basis for any documentation describing the
14 reasons that the advancement office suggested particular
15 candidates under that policy, i.e., this would not be a
16 custodial search. Georgetown's counsel explained that such
17 discovery may be sufficient for plaintiffs to evaluate whether
18 an actual potential donation influenced a candidate's
19 admission." And it goes on from there a couple more
20 sentences.

21 Have you guys looked at that stuff and you've
22 determined it's insufficient or you just haven't gotten yet?

23 MR. GILBERT: Absolutely.

24 THE COURT: Haven't gotten it yet.

25 MR. GILBERT: Yeah. It first talks about -- number

1 one talks about lists. Number two talks about similar lists.
2 They basically -- and then three, meet and confer. So having
3 flouted --

4 THE COURT: Okay. We're going to stop right here. I
5 got to take this verdict. Please, when we come back, I know
6 the flouting thing. You don't have to keep saying it. Just
7 I'm begging you, don't keep saying it. I want to deal with
8 the issues that I actually have to decide right now, and I
9 don't have to decide that one right now.

10 I need people to clear out from these two tables just
11 for a little bit because I need the lawyers from the case on
12 trial to be able to sit there. Apologies.

13 (Brief pause.)

14 THE COURT: It's 22 C 125. Here's where we were.

15 MS. MILLER: Your Honor, if I may briefly respond to
16 a statement that Mr. Gilbert made right before we broke.

17 THE COURT: No, because he's talking right now.
18 Write it down, make a note, and you'll tell me in a second.

19 MS. MILLER: Sure.

20 THE COURT: So basically my question was -- the
21 question on the table is -- I quoted from it -- was page 6 of
22 the status report of July the 31st I think it was, and I said,
23 Have you folks looked at that stuff and have you determined
24 that it's insufficient or have you just not gotten to it yet?
25 So that's my question. So we're back there. Go ahead,

1 Mr. Gilbert.

2 MR. GILBERT: It's insufficient because it is a
3 prescription to slow walk the process that's already way
4 overdue. That is, they're creating a two-step process.
5 First, get the lists that should have been produced long ago,
6 and then after the lists, have a meet and confer about what
7 more is needed, okay, and then have another period of time to
8 go beyond that. And we've said, you know what we need as to
9 why these people were on the list; that is, the documents that
10 we've been discussing about a moment ago about was it a
11 donation or was it a faculty child or that type of thing and
12 then how much was the donation, what were the communications
13 with the donor and the immediate staff? And they said 21 days
14 and then 28 days.

15 THE COURT: At this point, at this point as of right
16 now today at this moment, do you have the list?

17 MR. GILBERT: We have the list.

18 THE COURT: Okay. Pause. I want to ask another
19 question.

20 So consistent with the way things have been done on a
21 number of the other, you know, discovery issues that have
22 largely been worked out by the parties, would there be a
23 problem with saying, okay, you need more information but you
24 don't need it for each and every one of the people on each and
25 every one of the lists? I mean, I don't know how many people

1 we're talking about, so let's come up with a subset or let's
2 come up with some form of sampling or you pick 50 names or you
3 pick two names from this year and three names from that year,
4 something like that. Is there some reason why you can't do
5 something like that?

6 If I can ask -- I thought the people on the phone
7 were supposed to be muted. Anybody who is on the phone, if
8 you don't mute your phone, then you're ruining it for
9 everybody because we're going to cut off the entire phone call
10 because I'm hearing somebody click clacking on a typewriter
11 and it's distracting. You're hearing it, right? It's not me.

12 MR. GILBERT: We're hearing it.

13 THE COURT: Okay. The phone is getting turned off.
14 Disconnect. Done.

15 Go ahead.

16 MR. GILBERT: The issue, your Honor, is we don't know
17 how to make, considering your point, a selection process that
18 would not be in effect a cherry-picking of the most favorable
19 things by --

20 THE COURT: Why can't you select them? You can
21 select them. It would be you doing the cherry-picking. I
22 mean, you've got the lists, right? Why don't we just say --
23 why don't you just say, okay, I want the first five people on
24 the list or numbers 1, 6, 11, 16, and 21 or whatever.

25 MR. GILBERT: Again, I have to speak obliquely. We

1 know the number of names on the list. We could pick out a
2 segment of that list. I think that if we picked out a segment
3 of, say, 30 on that list each year, we could probably
4 accomplish what your Honor is --

5 THE COURT: How many years total are we talking
6 about?

7 MS. MILLER: We have data for the UID process back to
8 2017.

9 MR. FENSKE: For the admissions office in 2009 for
10 anyone who is in our financial aid database, which is a
11 subset.

12 THE COURT: You guys just said two different things.
13 You said 2017. You said 2009.

14 MS. MILLER: There's two different databases in
15 question, your Honor. Our admissions database goes back to --

16 THE COURT: I'm talking about what we're talking
17 about. I'm not talking about what we're not talking about.
18 Let's talk about what we're talking about. That's going to
19 look great on the transcript, but you know what I mean.

20 MR. FENSKE: Yes, your Honor. We produced the
21 original lists.

22 THE COURT: How many years of lists do we have?

23 MR. FENSKE: 2012 to the present. There may be a few
24 before that time.

25 THE COURT: All right. So we can negotiate about the

1 number. If I were to tell you -- if we're going to take a
2 subset, X number per year you're allowed to do this go-get
3 thing, what is it you want? And if you tell me, I want
4 everything that relates to, you're going to lose, so don't say
5 that. This is great. I'm telling you in advance what the
6 losing argument is. You don't usually get that from a judge.
7 I'm telling you what the losing argument is, so don't make
8 that argument. What would you need as it relates to that
9 subset of people?

10 MR. GILBERT: For that subset of people, we would
11 need the documents that show why the person is on the list,
12 whether it was related to a financial donation, and the amount
13 of the donation and who the donation amounts were communicated
14 with and who recommended the person to be on the list.

15 THE COURT: Okay. So let's say this. All right.
16 I'm just going to pull a number out of the air. Let's say
17 it's seven people per year that I let them pick for all the
18 years we're talking about and it's what he just said is what
19 you'd have to get. Talk to me about what that would entail on
20 your part.

21 MS. MILLER: Okay. In the first instance, we
22 already --

23 THE COURT: If you want to now correct that thing you
24 wanted to correct, go ahead and do that.

25 MS. MILLER: I'm not sure how he can say he's

1 evaluated that list and found them insufficient, because
2 although we've produced the president's list, we have not yet
3 produced the documents that we said we were going to produce
4 that have reasons for why various people were on the list.
5 Those are the documents we are in the process of redacting.
6 So he doesn't --

7 THE COURT: Pause. Pause. What's your time frame
8 for being done with the redacting?

9 MS. MILLER: We estimate based on the number of FERPA
10 redactions that need to be made, we need another three weeks
11 to get that done.

12 MR. FENSKE: Your Honor --

13 THE COURT: What if I tell you you got ten days?

14 MR. FENSKE: I do not --

15 MS. MILLER: I don't think we'd make it.

16 MR. FENSKE: We have 195 of them that are being
17 processed for production.

18 THE COURT: What's "them"?

19 MR. FENSKE: Of approximately 500 documents that
20 we've collected for these purposes, and we have 195 of them
21 that are being processed for production right now, and the
22 remainder are in the redaction process.

23 THE COURT: Okay. Are so let me just talk here for a
24 second. I don't need to repeat what I said at the last
25 hearing about the source of this problem, but I'll say this

1 one thing. The source of the problem is that something was
2 not disclosed to me that ought to have been disclosed to me
3 when I entered the order that I did. That's a shorthand for
4 what I said before.

5 And so for that reason, what we're trying to do is
6 now clean up the aftermath of that problem. It is not
7 pleasant to hear that cleaning up the aftermath, which has
8 already now taken four to six weeks, is going to take an
9 enormous amount more time because we would not have this
10 problem if I had been told what I ought to have been told way,
11 way back when I entered that order. So I'm not terribly
12 sympathetic -- strike out the "terribly" -- I'm not the least
13 bit sympathetic that this is going to take a long time.
14 People should have thought about that when they withheld --
15 it's like talking to a criminal defendant. Well, you should
16 have thought about that before you committed the crime.

17 All right. So here's what needs to happen. The
18 plaintiff needs -- the plaintiffs need to be able to know --
19 and I'm not talking about in two months or a month and a half
20 or whatever. They need to be able to know with regard to some
21 significant number of people on these lists, whatever you're
22 calling them, the president's lists, why they're on the list
23 and who the list got communicated to and the documentation, if
24 there is any, that would show what impact it had on the
25 admission process. If you want to talk about that as being a

1 penalty for what happened before, then that's fine with me.
2 That's what needs to happen. I don't care how it happens. I
3 don't care what the order says. That's what needs to happen.
4 That's the end game.

5 Now you guys need to figure out how to get there.
6 Today is Thursday. You need to figure it out by next Tuesday
7 morning. That's how long you got to figure it out. And when
8 I say "figure it out," I will not accept, will not accept one
9 of these status reports where everybody says to the other side
10 in my presence, go jump in the lake, strong letter to follow.
11 I won't accept it. I want an agreed -- I don't care how long
12 it takes, and it involves compromise to get there. I told you
13 what the end game is. Now you need to tell me by Tuesday how
14 you're going to get there. And there's going to be an order
15 that I'm going to sign that's going to be enforceable by
16 however court orders get enforced.

17 So does everybody understand that?

18 MS. MILLER: Yes, your Honor.

19 MR. GILBERT: I actually don't.

20 THE COURT: I didn't think you would.

21 MR. GILBERT: We know the impact. The question --

22 THE COURT: You know what I just did? It's called a
23 ruling.

24 MR. GILBERT: Fine, your Honor.

25 THE COURT: So you're going to take it. If you need

1 to know what it says, that's why God created court reporters
2 and transcripts. So you'll order it. She'll be happy to
3 provide you one. It's not exactly what you're asking for.
4 It's what you're getting. I'm not saying it's what you're
5 getting forever. Okay? I'm saying that's what you're getting
6 now. That's the ruling.

7 Now, on the rest of this, what I want in the status
8 reports from now on is two things. I want, here's where we
9 are in discovery. Like we've taken this many depositions,
10 we've got these depositions scheduled. I want to know that
11 stuff. And if there's any discussions going on about
12 settlement, I want to know that. I don't want disputes about
13 stuff. Those all have to go in motions. Those all have to go
14 in motions. I set the schedule for the filing of those and
15 the responses to them at the previous date. And that's going
16 to be the way we're going to do it. I'm absolutely going to
17 read everything you've given me just like I have so far, but
18 I'm not going to deal with discovery disputes or other
19 disputes that aren't in the form of a motion. And I get that
20 that makes for more work for everybody. Hey, it's a big case.
21 You can handle it.

22 So here's the one other thing that I wanted to talk
23 about. So this case -- it's a large case because of the --
24 I'm told there's 200,000 people potentially in the class, and
25 there's however many defendants, somewhere between 15 and 20.

1 So it's a big case. It's like an MDL. It's like an MDL
2 except it's not an MDL. What I would normally be doing in an
3 MDL at this point is I would be considering the appointment of
4 a settlement master, not to coerce anybody to settle, but just
5 to start talking to people. I don't know whether you need
6 that in this case or not.

7 A settlement has been negotiated. If I had to bet, I
8 bet there's discussions going on with other people, but I need
9 you to think about whether you have a position on whether I
10 ought to do that or not because that's what I would normally
11 do at this stage of an MDL. You know, we're past the motion
12 to dismiss stage and you're into the discovery stage enough at
13 least to have some sense of what's going on. I would normally
14 do that. We can talk about who at some other point, but I
15 need you to think about that, and your positions on that need
16 to go in the next status report. And if you want to propose a
17 selection process, that's fine too.

18 So the next -- unfortunately, I start on Tuesday a
19 trial in a 13-year-old criminal case that I inherited from a
20 colleague who left the court in which the defendant, God bless
21 him, is pro se. That criminal case, which involves a single
22 defendant, has as of right now 1,199 docket entries. The
23 average number of docket entries -- the criminal lawyers will
24 know this -- for a single-defendant criminal case is maybe 30;
25 40 if there's a lot of stuff filed. I'm going to be on trial

1 for three weeks and probably close to the whole month of
2 September and I have to get that case done. I'm not going to
3 be able to do one in September, so I'm going to set it for the
4 first week of August -- October rather, so I'm just telling
5 you why.

6 Okay. So the next one of these is going to be on
7 Thursday, the 5th of October, at 1:00. So the deadlines --
8 the status report is due a week before that which means the
9 28th of September, and the deadlines that I told you about
10 before for motions and responses kick in. It's X days before
11 and Y days before.

12 All right. Is there anything anybody needs to take
13 up before you leave the room?

14 MS. MILLER: 1:00 o'clock? I just didn't hear you.

15 THE COURT: 1:00 o'clock. It will be in an order
16 too.

17 Okay. Thanks. Bye.

18 (Which were all the proceedings had in the above-entitled
19 cause on the day and date aforesaid.)

20 I certify that the foregoing is a correct transcript from
21 the record of proceedings in the above-entitled matter.

22 Carolyn R. Cox Date _____
23 Official Court Reporter
24 Northern District of Illinois
25 /s/Carolyn R. Cox, CSR, RPR, CRR, FCRR